

*Mr Baranblatt*

(J)

*File Caracci contempt*

IN THE HOUSE OF REPRESENTATIVES  
OF THE COMMONWEALTH  
OF PENNSYLVANIA

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IN RE: CONTEMPT PROCEEDINGS OF LIEUTENANT  
ANGELO J. CARCASI

BRIEF CONTRA CONTEMPT ACTION

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I. STATEMENT OF THE CASE

On February 6, 1973, the House of Representatives of the Commonwealth of Pennsylvania passed House Resolution No. 21 ("H.R.21") which established a five member committee, appointed by the Speaker of the House of Representatives, broadly empowered, inter alia, to investigate all individuals, entities and matters "related to, involved in, or affecting law enforcement or the administration of justice. . . ." Pursuant to this resolution, Lieutenant Angelo J. Carcaci was summoned to testify before said committee, but, questioning the legality of the resolution, he refrained from answering certain questions as presented. As a result of this stance, Lieutenant Carcaci was by House Resolution No. 152 directed to appear before the bar of the House; this latter resolution provides that if he continues in his refusal

to answer questions propounded to him he shall be committed to prison unless he purges himself of contempt.

It is in support of Lt. Carcaci's actions that this brief is submitted.

## II. ARGUMENT

### A. THE LANGUAGE AND LEGISLATIVE HISTORY OF HOUSE RESOLUTION NO. 21 MANIFESTS A RESOLUTION SO BROAD, VAGUE, AND INDEFINITE AS TO MAKE IT UNCONSTITUTIONAL.

An examination of the debates in the House of Representatives in connection with the introduction of H.R.21, as contained in Volume 1, Nos. 10 and 11, Monday, February 5, 1973 and Tuesday, February 6, 1973 of the Legislative Journal, shows clearly the overbroad nature of the resolution in question. Representative Hepford, co-sponsor of the resolution, refused to indicate in any definitive way the intended scope of the proposed committee. In fact, Mr. Hepford stated that he did "not know what direction this investigation will take. . . ." Vol. 1, No. 10, at 232. According to Mr. Hepford, the committee itself would decide where to begin the investigation. This attitude was maintained despite clear indications from members of the House that the scope of the investigation could leave virtually no one untouched. With regard to that which affects law enforcement, it was pointed out that the investigation could easily include the State Police, every local police department and policeman, all constables, sheriffs,

and deputy sheriffs, fish and game wardens, liquid fuel tax agents, cigarette tax agents, narcotics agents, parole officers, security personnel of the Harness Racing Commission, enforcement agents of the Liquor Control Board, military police of the Pennsylvania National Guard, local domestic relations officers, State Board of Probation and Parole, the probationary division of any court, State Board of Pardons, and all departments, boards, commissions of the Commonwealth and the officers and employees thereof.

Vol. 1, No. 10 at 229. Similarly, the investigation into the administration of justice could encompass all local crime commissions, every judge, the entire judicial system, decisions of the Supreme Court, magistrates and justices of the peace, all local district attorneys, the entire judicial sentencing system, operation of grand juries, the entire jury system, coroners and county commissioners, all state penal institutions, all local jails, juvenile homes, wardens, guards and other personnel, all lobbyist groups such as the Fraternal Order of Police, local bar associations and the Pennsylvania Bar Association, newspapers, and radio and television stations. Vol. 1, No. 10 at 229. "[N]obody, but nobody, could avoid scrutiny or examination if he was in any way connected with the administration of justice." Vol. 1, No. 10 at 229.

Not only would Mr. Hepford not contribute any information as to the intended scope of the resolution, but he also refused to relate what specific factual circumstances prompted the need

for such action. Such a statement frequently becomes the preamble to Legislative resolutions.

The illegality of the resolution is further emphasized by the fact that in 1966, a committee was created to investigate specifically the administration and administrative practices of the Pennsylvania State Police. The authorizing resolution of the 1966 committee illustrates the requisite specificity and definiteness lacking in H.R.21. The questions posed by the current committee to Lt. Carcaci plainly evidence the ability and intention of the present committee to duplicate the efforts of the 1966 committee. The broadness of H.R.21 permits additional duplication in light of House Resolution No. 116 of 1973 which authorizes the Liquor Control Committee to investigate all matters affecting the administration of the liquor laws by the Pennsylvania Liquor Control Board. The debate with regard to H.R.21 shows the potential for redundant efforts in this area also.

This possibility of duplication of investigation is only one manifestation of the unconstitutionality of House Resolution No. 21. The "carte blanche" powers reposed in the committee, as noted by Representatives in the House debate (Vol. 1, No. 10 at 235), are contrary to both Pennsylvania and federal law. It is well-established that "[t]he right to investigate in order to acquire factual knowledge concerning particular subjects which will,

or may, aid the legislators in their efforts to determine if, or in what manner, they should exercise their powers, is an inherent right of a legislative body, ancillary to, but distinct from, such powers." McGinley v. Scott, 401 Pa. 310, 320, 164 A.2d 424 (1960). Accord, Smith v. Gallagher, 408 Pa. 551, 594, 185 A.2d 135 (1962). But, as the Pennsylvania Supreme Court warned in McGinley, supra, "[L]egislative investigations must be kept strictly within their proper boundaries if the orderly and long-established processes of our coordinate branches of government are to be maintained." 401 Pa. at 323. Thus, the law contemplates reasonable boundaries to a resolution which are non-existent in this instance. "The investigatory power of a legislative body is limited to obtain information on matters which fall within its proper field of legislative action." United States v. Owlett, 15 F. Supp. 736, 742 (M. D. Pa. 1936). Subpoenae must show relevance to appropriate legislative action; no fishing expeditions are to be permitted. Fabrizio v. Koprivier, 73 Dauph. 345 (1959).

In light of the character of the House debate, particularly the comments of the sponsors and supporters of H.R.21, it is important to heed the words of the court in Commonwealth v. Costello, 21 Dist. R. 232, 234 (1912): "In People ex rel. McDonald v. Keeler, 99 N. Y. 463, it was said by the Court of Appeals of the State of New York, per Rapallo, J.: 'An investigation instituted for the mere

sake of investigation, or for political purposes, not connected with intended legislation, or with any of the matters upon which the house could act, but merely intended to subject a party or body investigated to public animadversion . . . would not, in our judgment, be a legislative proceeding.'" Questions directed to alleged activities in 1964 within the Pennsylvania State Police, which activities were the subject of a House inquiry in 1966 are not in pursuit of Legislative purposes.

The unconstitutionality of H.R.21 is evident from a reading of Watkins v. United States, 354 U. S. 178 (1957), which concerned a review of a conviction for contempt of Congress of an individual summoned before the Subcommittee of the Committee on Un-American Activities of the House of Representatives. The crucial weakness of H.R.21 is demonstrated by the United States Supreme Court at page 201: "It is the responsibility of the Congress, in the first instance, to insure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. Those instructions are embodied in the authorizing resolution. That document is the committee's charter. Broadly drafted and loosely worded, however, such resolutions can leave tremendous latitude to the discretion of the investigators. The more vague the committee's charter is, the greater becomes the possibility

that the committee's specific actions are not in conformity with the will of the parent House of Congress." (Emphasis added.)

The history of H.R.21, the debate thereon, and the language of the resolution present the precise excesses and abuses focused upon by the United States Supreme Court in Watkins. The authorizing resolution in Watkins read, inter alia, that one of the objects of the Committee on Un-American Activities was "all other questions in relation [to un-American and subversive propaganda and propaganda activities] that would aid Congress in any necessary remedial legislation." Such a sweepingly broad charter is strikingly similar to a resolution authorizing an investigation into anything that affects law enforcement or the administration of justice. Referring to the United States House resolution, the United States Supreme Court found it difficult to imagine a "less explicit authorizing resolution." 354 U. S. at 202. Like the Pennsylvania special investigating committee, as was freely acknowledged by its co-creator, Mr. Hepford, the federal committee was "allowed, in essence, to define its own authority, to choose the direction and focus of its activities." 354 U. S. at 205. With this basis, the United States Supreme Court ordered the District Court to dismiss the indictment for contempt. Justice requires that similar court action be obviated in the case of Lt. Carcaci given this clear pronouncement by the United States Supreme Court. H.R.21 is so broad, vague, and indefinite as to make it unconsti-

tutional. Thus, the acts of the committee created thereby must be held null and void.

Finally, the vagueness and unconstitutionality of H.R.21 is further illustrated by the fact that as broadly authorized, the special investigating committee could inquire into the activities of federal entities and individuals operating within the Commonwealth insofar as they relate to, are involved in, or affect law enforcement and the administration of justice. To this extent, the committee would be in direct conflict with the law. United States v. Owlett, supra.

B. H.R.21 IS AN UNCONSTITUTIONAL USURPATION OF POWER CONFERRED BY LAW ON THE PENNSYLVANIA CRIME COMMISSION RENDERING ALL ACTIONS BY THE SPECIAL INVESTIGATING COMMITTEE NULL AND VOID.

By statute, as passed by both houses of the General Assembly and signed by the Governor, the Pennsylvania Crime Commission is empowered to "inquire into . . . the adequacy of law enforcement and the administration of justice," to "develop standards and make recommendations for actions which may be taken by the State and local governments to prevent, reduce and control crime and increase respect for law, including . . . improvements in techniques, organization and administration of law enforcement activities, improvements in the administration of justice," to "make a detailed written report of every completed investigation

which may include recommendation for legislative or administrative action." Section 923 of the Administrative Code, Act of April 9, 1929, P. L. 177, as amended by the Act of July 31, 1968, P. L. 754, 71 P.S. §307-7. Given this statutory grant of power, it is clear that via H.R.21, one house of the General Assembly has authorized the creation of a committee of that house of the General Assembly to do what has been statutorily conferred (and constitutionally upheld--see Dixon v. Pennsylvania Crime Commission, 347 F. Supp. 138 (M. D. Pa. 1972)) upon the Crime Commission by both houses of the General Assembly as approved by the Governor. H.R.21 is, therefore, a usurpation by the House of power and authority of a commission created by law. This underscores the redundancy and illegality of H.R.21, especially in the real possibility of harassment of individuals which may result from overlapping inquiries of various investigatory bodies. As was said in Watkins, supra, 354 U. S. at 198, "We cannot simply assume . . . that every congressional investigation is justified by a public need that overbalances any private rights affected." There is indeed a potential for harassment given the 1966 committee to investigate the State Police, the Pennsylvania Crime Commission, and now the special investigation committee created by H.R.21 which threatens to overlap and duplicate previous and current efforts in the field of law enforcement and the administration of justice. It is submitted that for these reasons,

H.R.21 is unenforceable and, therefore, any actions by the committee created thereunder are null and void.

C. A RESOLUTION BY THE HOUSE OF REPRESENTATIVES HOLDING AN INDIVIDUAL IN CONTEMPT FOR REFUSING TO ANSWER QUESTIONS POSED BY A COMMITTEE WHOSE AUTHORIZING RESOLUTION IS VAGUE, BROAD, AND INDEFINITE IS A VIOLATION OF DUE PROCESS, AND COMMITMENT AS A RESULT THEREOF IS SIMILARLY A DEPRIVATION OF DUE PROCESS ABSENT A JUDICIAL INQUIRY.

The Fourteenth Amendment to the United States Constitution provides, inter alia, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law. . . ." The right to due process is enunciated in Article I, section 9 of the 1968 Constitution of Pennsylvania. As was said in Hannah v. Larche, 363 U. S. 420, 442 (1960), "'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process."

By resolution of one house of the Legislature, Lt. Carcaci has been adjudged in contempt. He is, therefore, threatened with the loss of his liberty. It is submitted that

in light of the substantive defects of H.R.21, as discussed previously, and absent a judicial inquiry, such a determination has resulted in Lt. Carcaci's being denied due process of law.

Although not an accusatory body (see Jenkins v. McKeithen, 395 U.S. 411 (1969), rehearing denied, 396 U. S. 869), H.R.21's special investigating committee by virtue of the contempt power of the Legislature by Article II, section 11 of the 1968 Constitution of Pennsylvania and by virtue of the power to commit for contempt conferred by the Act of June 13, 1842, P. L. 491, 46 P.S. §61, is not merely a fact-finding body. In their ability to commit for contempt, the Legislature and the committees thereof are adjudicative bodies.. It is submitted that as such, this power is unconstitutional as it results in a denial of due process.

It is further submitted that any determination of contempt of the Legislature or a committee thereof must be by petition to a court of appropriate jurisdiction. See generally Uphaus v. Wyman, 360 U. S. 72 (1959); Sweezy v. New Hampshire, 354 U. S. 234 (1957). In the first instance, the committee should be required to proceed by petition to the proper court for a rule to show cause why the summoned witness should not be compelled to testify, i.e., to request court-enforced compliance with issued subpoenae. This was the procedure utilized in New Hampshire in the United States Supreme Court cases cited above. This is also the practice followed by the Pennsylvania Crime Commission as

authorized by law. Section 923 of the Administrative Code, 71 P.S. §307-7. See generally Pennsylvania Crime Commission v. Nacrelli, 5 Pa. Commonwealth Court 551 (1972). Only in a judicial hearing can the separation of powers be maintained, can the constitutional protections afforded to all individuals be guaranteed. Procedural rights may be there assured: "It is a commonplace that adjudicatory action cannot validly be taken by any tribunal, whether judicial or administrative, except upon a hearing, wherein each party shall have the opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf and to make argument." Allstate Insurance Co. v. Fioravanti, 451 Pa. 108, 299 A.2d 585 (1973). An adjudication of contempt must necessarily apply and assure such protections. The committee has taken affirmative action which will gravely affect Lt. Carcaci's legal right to liberty. See Hannah v. Larche, supra. This, therefore, is an adjudication, the fundamental importance of which warrants a judicial context. Any other procedure or proceeding is invalid.

Thus, the indefiniteness and vagueness of the authorizing resolution with its potential for harassment of individuals and overlapping and usurpation of the powers of other investigatory bodies in combination with the threat of incarceration for contempt of the committee created thereby,

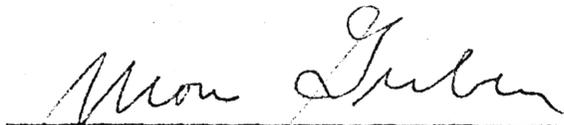
renders the contempt determination null and void, the resolution itself void for vagueness, and the statute conferring upon the Legislature contempt and commitment power unconstitutional both in its vagueness and in the lack of adequate standards and criteria by which an individual may adequately determine his rights. "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits. . . ." Giaccio v. Pennsylvania, 382 U. S. 399, 402 (1966). H.R.21 and its special investigating committee have created a threat to the rights of all citizens of this Commonwealth. This is all too clear from the contempt adjudication by one house of the Legislature in response to an individual's refusal to answer questions before a committee whose powers are limitless. As was said in Watkins, supra, 354 U. S. at 205, "Protected freedoms should not be placed in danger in the absence of a clear determination . . . that a particular inquiry is justified by a specific legislative need." (Emphasis added.) It is indeed unfortunate when it is up to the courts to "control the investigatory conduct of overzealous or irresponsible or politically activated factfinders so that individuals' fundamental rights are not swept aside. Too high a price can be paid for the results to be obtained in the administration of legislatively mandated investigative proceedings. In an attempt to attain the statutorily

prescribed goals, those charged with this public function must be constantly vigilant to remember that the safeguards which have been erected to insure against untrammelled abuses must not be forgotten in their desire to serve the total public interest." Pennsylvania Crime Commission v. Nacrelli, supra, 5 Pa. Commonwealth Ct. at 583-84 (dissenting opinion).

### III. CONCLUSION

The history, language, and application of H.R.21, a legislative resolution unconstitutional in its broadness, vagueness, and indefiniteness, and which has created a committee with the potential for harassment and denial of individual constitutional protections, require that the resolution be rescinded or held nugatory and that all actions of the committee created thereby be held null and void. The contempt resolution and commitment procedure attempting to restrain the liberty of Lt. Carcaci must, therefore, also be rendered null and void.

Respectfully submitted,

  
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